CORPORATIONS — REORGANIZATION AND CONSOLIDATION — SALE OF ASSETS UNDER CONSENT DECREE OF COURT — IS VALUE SET BY DECREE BINDING ON SURETIES WHEN CREDITORS TAKE OVER ASSTES. — The creditors of an insolvent corporation, with the knowledge and consent of the surety, took over the assets under a consent decree of court as a step in a plan of reorganization. They formed a new corporation to take the assets and issued paid-up capital stock equal in par value to more than the amount of their claims against the old insolvent corporation. The creditors asserted the right to apply to their claims only the value as set by the decree and to hold the sureties for the balance. *Held*, that the creditors were estopped by the issue of paid-up capital stock to assert that the assets were worth less than the full amount of their claims. *Mechanics & Metals Nat. Bank* v. *Howell*, 207 Fed. 973. See NOTES, p. 467.

DOMICILE — ACQUIRING OF DOMICILE BY MILITARY MEN — POSSIBILITY OF DOMICILE IN FEDERAL TERRITORY. — The deceased, who had acquired a domicile of choice in New York, became an officer in the regular army, and served in Texas, at Governor's Island, in Chicago, and again at Governor's Island, where his headquarters were at the time of his death. He intended to live in the District of Columbia after leaving Governor's Island. *Held*, that his residence in federal territory, Governor's Island, coupled with his intention to continue to live in federal territory, the District of Columbia, gave him a domicile of choice in federal territory, so that his estate was not subject to the New York transfer tax. *Matter of Grant*, 83 N. Y. Misc. 257.

The portions of territory, such as Governor's Island, over which the United States exercises exclusive control, are nevertheless portions of the legal units, the states, in which they lie. The decision therefore seems erroneous. See NOTES, p. 472.

EMINENT DOMAIN — RESTRICTIONS UPON PROPERTY ADJACENT TO PUBLIC PARKS. — A Pennsylvania statute conferred upon cities the power to purchase private property within two hundred feet of public parks and parkways, and "to resell . . . with such restrictions in regard to the use thereof as will fairly insure the protection of such . . . parks . . ., their environs, the preservation of the view, appearance, light, air, health, and usefulness." ACT, June 8, 1907 (P. L. 466). In pursuance thereof, the councils of the defendant city passed an ordinance appropriating the plaintiff's property, and authorized its resale to B. subject to restrictions. *Held*, that the statute is unconstitutional. *Pennsylvania Mutual Life Ins. Co.* v. *City of Philadelphia*, 88 Atl. 904 (Pa.)

The right of eminent domain may be invoked only for a public use. *Embury* v. *Conner*, 3 N. Y. 511; *Gaylord* v. *Sanitary District of Chicago*, 204 Ill. 576, 68 N. E. 522. But as to what is a public use the courts are not agreed. One line of decisions makes the phrase synonymous with "general utility," "public advantage or benefit." *Olmstead* v. *Camp*, 33 Conn. 532. See *Tuttle* v. *Moore*, 3 Ind. Ter. 712, 725, 64 S. W. 585, 591; see 15 HARV. L. REV. 399. Another, and closer, interpretation, and one to which the principal case subscribes, requires that there be a "use or right of use by the public." *Matter of the Application of the Eureka Basin Warehouse and Manufacturing Co.*, 96 N. Y. 42; *Arnsperger* v. *Crawford*, 101 Md. 247, 253, 61 Atl. 413, 415. See 1 LEWIS, EMINENT DOMAIN, 3 ed., § 258. All this is involved in the question which the principal case suggests as to how building restrictions for æsthetic purposes can be imposed upon property surrounding public parks. The simplest method would be to make a direct limitation upon the present owners. Whether this could be justified as an exercise of the police power is at least doubtful. *Passaic* v. *Paterson Bill Posting Co.*, 72 N. J. L. 285, 62 Atl. 267; *People* v. *Green*, 85 N. Y. App. Div. 400, 83 N. Y. Supp. 460. See 20 HARV.

L. REV. 35. But the right to take land by eminent domain includes the taking of a limited interest in property in the nature of an easement. *Pacific Postal Telegraph-Cable Co.* v. *Oregon, etc. R. Co.*, 163 Fed. 967. See *Attorney-General* v. *Williams*, 174 Mass. 476, 55 N. E. 77, 178 Mass. 330, 59 N. E. 812; *Williams* v. *Parker*, 188 U. S. 491, 23 Sup. Ct. 440. And this might be under either theory of public use. A second plan would be for the state to purchase and retain the fee of the surrounding property; a third, for the state to resell subject to restrictions. Either of these would be within the broader interpretation of public use. But under the stricter view, there would be the difficulty of proving a sufficient public user beyond mere public advantage. Where the state retains the fee, it might be a close case. But where the right retained is solely in the nature of an easement, the method would be unconstitutional.

EVIDENCE — HEARSAY: IN GENERAL — ADMISSIBILITY OF DECLARATIONS ON QUESTIONS OF IDENTIFICATION. — At a trial for murder, in order to identify the defendant as the guilty party, the prosecution offered in evidence a declaration of the victim, in which he pointed out the accused and identified him as the assailant. The statement was not shown to be a dying declaration. *Held*, that the evidence is admissible. *State* v. *Findling*, 144 N. W. 142 (Minn.).

The court assumes a general relaxation of the rules of evidence on questions of identification. In a few respects this appears to be true. Thus the opinion rule does not exclude the opinions of properly informed witnesses concerning the identity of a person. *Craig* v. *State*, 171 Ind. 317, 86 N. E. 397; *State* v. *Powers*, 130 Mo. 475, 32 S. W. 984. Leading questions are also allowed with greater freedom. *Rex* v. *Watson*, 2 Stark. 116, 128. But see *Rex* v. *Dickman*, 5 Cr. App. R. 135, 142. These minor variations, however, scarcely sustain the broad ground taken by the court. An unsworn identification, by declaration alone or with gesture, presents all the elements of hearsay, and is therefore inadmissible by the weight of authority. *O'Toole* v. *State*, 105 Wis. 18, 80 N. W. 915; *State* v. *Houghton*, 43 Ore. 125, 71 Pac. 982. Some courts admit the declaration as part of the *res gesta*, on the ground that it accompanies and explains the material act of pointing out the accused. *Lander* v. *People*, 104 Ill. 248. Such a view, however, ignores the hearsay quality of the gesture itself, and virtually makes an accompanying gesture the only requisite for the admissibility of any declaration. The mere recognition of the defendant by the victim might possibly have enough probative value on the issue of identification to render it admissible as an expression of a material mental state. See *Mutual Life Ins. Co.* v. *Hillmon*, 145 U. S. 285; *Jacobs* v. *Whitcomb*, 10 Cush. (Mass.) 255. But this exception to the hearsay rule would not cover the accompanying descriptive declaration. *State* v. *Egbert*, 125 Ia. 443, 101 N. W. 191; *Clark* v. *State*, 39 Tex. Cr. R. 152, 45 S. W. 696. A different situation arises, of course, when a former identification is used to supplement a witness's recollection. *Regina* v. *Burke*, 2 Cox C. C. 295. And the hearsay rule would not affect the admissibility of the previous declaration to support an impeached witness. See *Murphy* v. *State*, 41 Tex. Cr. R. 120, 51 S. W. 940. See also 2 WIGMORE, EVIDENCE, § 1130. But the principal case seems difficult to support.

FALSE IMPRISONMENT — ARREST WITHOUT WARRANT WHERE CRIME CHARGED NOT COMMITTED. — A bookseller having suffered repeated losses, and reasonably believing a certain clerk to be guilty of the thefts, caused him to be arrested without a warrant and prosecuted, on the charge of having stolen a particular book. This book had not in fact been stolen. *Held*, that the bookseller, though not liable for malicious prosecution, is liable for false imprisonment. *Walters* v. *Smith*, 30 T. L. Rep. 158.